

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 10 Cr. 147 (S-2) (SLT) (CLP)

-against- : **DECLARATION IN SUPPORT
OF MOTION TO REOPEN**

FRANCIS GUERRA, :

Defendant. :

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GERALD J. McMAHON, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury:

1. I am the attorney of record for defendant Francis Guerra and, as such, am fully familiar with the facts and proceedings herein.

2. After a two day detention hearing and the submission of briefs by both sides, this Court issued a twenty-nine page decision denying defendant's motion for bail. See Memorandum and Order, filed August 29, 2011 (docket entry number 324) ("Memorandum and Order").

3. A significant part of the rationale for the denial of bail was the charged murder of Michael Devine, for which "the Court credits the agent's testimony as to the strength of the government's evidence on this Count." Memorandum and Order, at 20.

4. Unbeknownst to the Court and defendant, at the time that the agent testified at the detention hearing the government was in possession of significant evidence which cast

serious doubt on the veracity of the claim that Mr. Guerra had any involvement in the January 1992 murder of Devine.

5. On October 4, 2011, your declarant came into possession of an FBI 302 Report of an interview of Frank Sparaco on May 20, 1993. (A copy of the 302 is appended hereto as Exhibit A).

6. Participants in the proffer session were Mr. Sparaco, his attorney, two Assistant United States Attorneys, and at least one FBI agent.

7. Pursuant to "the proffer agreement, SPARACO was not *required* to name anyone involved in the murder of Michael Devine ..." Exhibit A (emphasis added).

8. Despite the fact that Sparaco was not obligated to state if anyone else was involved in the Devine murder, he went out of his way to explicitly state that the killing was his own doing:

Sparaco stated that he killed MICHAEL DEVINE on his own initiative because DEVINE had been dating a friend's wife and ignored warnings to stop. (...) SPARACO had warned DEVINE to stop dating this married woman, but DEVINE had ignored him. (...)

On the night of the murder ... SPARACO approached DEVINE as he exited his car after parking. SPARACO told DEVINE to stop dating the woman and DEVINE laughed at him stating that the Colombo family was all going to jail and that they had no power over him. DEVINE added that if SPARACO did not stop bothering DEVINE, then SPARACO would be in trouble. SPARACO shot DEVINE.

Exhibit A.

9. According to the Bureau of Prisons web site, Sparaco is a sentenced Federal prisoner with a projected release date of "05-12-14". Curiously, however, he is "NOT IN

BOP CUSTODY”, which strongly suggests that he is a cooperating witness. (A copy of the Bureau of Prisons Inmate Locator report for Frank Sparaco is appended hereto as Exhibit B).

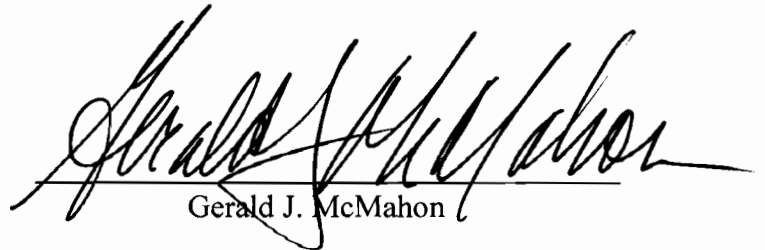
10. As evidence which “tends to exculpate” Guerra with respect to the Devine murder, the 1993 FBI 302 report concerning the interview of Frank Sparaco is obviously *Brady* material which should have been produced to the defense at the detention hearing.

11. At a minimum, the government should be directed to produce all evidence in its possession, custody or control suggesting that Frank Sparaco killed Devine on his own and/or that Frank Guerra had nothing to do with that murder.

12. More importantly, given the fact that the Devine murder charge is now as suspect as the Scopo murder allegation, this Court should re-consider its denial of bail and release Mr. Guerra pursuant to the substantial bail package proposed at the bail hearing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2011.



Gerald J. McMahon

cc: All Counsel
(By ECF)

EXHIBIT A

FD-302 (Rev. 3-10-82)

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/21/93

FRANK SPARACO was interviewed in the presence of his attorney, ROBERT ELLIS, and AUSAS GEORGE A. STAMBOULIDIS and ANDREW WEISSMANN. SPARACO was interviewed pursuant to a proffer session connected to SPARACO's plea to the murder of MICHAEL BOWCOCK on June 27, 1991. In accordance with the proffer agreement, SPARACO was not required to name anyone involved in the murder of MICHAEL DEVINE or STEVEN MANCUSI. SPARACO's statements are not admissible against him unless he later testifies in contradiction to these statements.

SPARACO stated that he killed MICHAEL DEVINE on his own initiative because DEVINE had been dating a friend's wife and ignored warnings to stop. SPARACO knew DEVINE was dating the woman because he had spied DEVINE and the woman together at Hedges Restaurant in Staten Island, NY, and he had followed DEVINE to the woman's home. On another occasion, DEVINE went on a skiing trip with this woman. SPARACO had warned DEVINE to stop dating this married woman, but DEVINE had ignored him.

On the night of the murder, SPARACO waited in his car outside DEVINE's condominium. When DEVINE drove by in his Pathfinder, SPARACO exited his car, walked near the entrance to the garage and waited for DEVINE to open the garage door via his remote control. After DEVINE entered the garage, SPARACO walked in behind him. SPARACO shot DEVINE between 3:30 AM and 4:00 AM in the morning.

SPARACO approached DEVINE as he exited his car after parking. SPARACO told DEVINE to stop dating the woman and DEVINE laughed at him stating that the Colombo family was all going to jail and that they had no power over him. DEVINE added that if SPARACO did not stop bothering DEVINE, that SPARACO would be in trouble. SPARACO shot DEVINE.

SPARACO recalls the murder weapon was a .32 caliber handgun with a silencer. SPARACO emptied the gun into DEVINE and believed the gun held between 5 and 8 shots. The gun was later discarded out the SPARACO's car window about 8 to 10 blocks away from the murder.

Investigation on 5/20/93 at Brooklyn, NY File # 281A-NY-214955

by Christopher M. Favo/cmf Date dictated 5/21/93

EXHIBIT B

Inmate Locator - Locate Federal inmates from 1982 to present

Name	Register #	Age-Race-Sex	Release Date <small>Actual or Projected</small>	Location
1. FRANK SPARACO	18344-053	56-White-M	05-12-2014	NOT IN BOP CUSTODY

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